

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

New Orleans, Louisiana

**B & B ELECTROMATIC, INC.
Employer**

and

Case No. 15-RC-8423

**SHEETMETAL WORKERS INTERNATIONAL
UNION, LOCAL 21, AFL-CIO and
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 995, AFL-CIO
Joint Petitioners**

DECISION AND DIRECTION OF ELECTION

The Employer, B&B Electromatic, Inc., manufactures traffic control devices at a facility located in Norwood, Louisiana. Two unions, Sheetmetal Workers International Union, Local 21, AFL-CIO, and International Brotherhood of Electrical Workers, Local 995, AFL-CIO, jointly filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 24 of the Employer's production and maintenance employees. A hearing officer of the Board held a hearing and the parties were given the opportunity to file briefs. Only the Employer availed itself of the opportunity to file a brief in this matter.

The parties disagree on two issues: (1) Whether the petition should be dismissed because of the *alleged* failure of the International Brotherhood of Electrical Workers, Local 995, AFL-CIO (herein called Electrical Workers) to present a showing of interest in support of the petition, and (2) Whether the purchasing clerk is a plant clerical employee who should be included in the unit or an office clerical

employee who should be excluded from any production and maintenance unit found appropriate.

With regard to the first issue, because the Board has held that a petitioner's showing of interest is an administrative matter that is not litigable at representation hearings, the hearing officer properly refused to permit the parties to litigate this issue. However, because the Employer repeatedly raised this issue both before and during the hearing, and addressed the matter again in its post-hearing brief, its arguments will be discussed in this Decision. The Employer, in contending that the Electrical Workers did not submit a showing of interest in support of the petition, maintains that the petition should be dismissed because it is invalid as a joint petition supported only by a showing of interest made on behalf of the Sheetmetal Workers International Union, Local 21, AFL-CIO. The Joint Petitioners contend that the petition should be processed. With regard to the second issue, the Employer maintains that the purchasing clerk is a plant clerical employee who should be included in the unit, while the Petitioners seeks to exclude the purchasing clerk from the unit. This Decision will address both of these issues separately. For the reasons discussed below, I find that, regardless of whether the Electrical Workers submitted a separate showing of interest, because the overall showing of interest submitted by the Joint Petitioners is adequate, and the unions have expressed a desire to jointly represent employees in the petitioned-for unit, the Electrical Workers have standing to appear in this matter as a joint petitioner. I also find that the purchasing clerk is a plant clerical employee and will include her in the unit.

Whether the Petition Should Be Dismissed Because of the Electrical Workers' Alleged Failure to Submit a Showing of Interest

The Employer contends that when a petition is filed jointly, both unions are required to submit a showing of interest. It maintains that in all cases in which the Board has dealt with a joint petitioner's documentation in support of its petition, both unions submitted a showing of interest. The Employer initially made this argument prior to the commencement of the October 11 hearing. On October 4, the Employer filed a "Motion to Dismiss RC Petition" in which it argued that the instant petition should be dismissed because of the Electrical Workers' alleged failure to submit a showing of interest. By "Order Denying Employer's Motion to Dismiss", dated October 9th, I denied the Employer's Motion. Subsequently, the Employer served a subpoena *Duces Tecum* upon the undersigned seeking production, in redacted form, of the Joint Petitioner's Showing of Interest. The Employer, by an October 10th letter to the General Counsel in Washington, D.C., requested that the General Counsel grant the Region permission to make this documentation available at the instant hearing. By letter dated that same day, the Office of General Counsel denied the Employer's request, stating, in part, that, "The Agency has a long-standing policy of protecting from disclosure union authorization cards and I note that the petitioner's showing of interest is a matter which is not subject to litigation in a representation proceeding."

For the following reasons, I find that the Electrical Workers have standing to appear as a joint petitioner regardless of whether it submitted a separate showing of interest: 1) I was administratively satisfied that the Joint Petitioners have submitted

an adequate showing of interest to warrant further processing of the petition, and 2) Even if one of the unions did not submit its own showing of interest, it would not preclude the processing of the instant petition.

With regard to the first point, it is well established that a determination as to the adequacy of a petitioner's showing of interest is an administrative matter not subject to litigation. *O.D. Jennings & Co.*, 68 NLRB 516 (1946); *General Dynamics Corp.*, 175 NLRB 175 NLRB 1035 (1969); *Allied Chemical Corp.*, 165 NLRB 235 (1967); *NLRB v. J.I. Case Co.*, 201 F. 2d 597 (9th Cir. 1953). This is largely because the sole purpose of conducting a showing of interest evaluation is to enable the Board to determine for itself whether the expenditure of its limited resources is warranted. *Pike Co.*, 314 NLRB 691 (1994); *O.D. Jennings & Co.*, *supra*; *S. H. Kress & Co.*, 137 NLRB 1244, 1248 (1962). The Board makes this determination as a result of the investigation it conducts shortly after a petition is filed. See *National Labor Relations Board Casehandling Manual, Representation Proceedings, Sec. 11021*; *G.R.D.G, Inc.*, 323 NLRB 258 (1997). In the instant matter, prior to the commencement of the hearing, the Region investigated the Joint Petitioners' showing of interest and found that it was sufficient to warrant further processing of the petition.

Because of the Board's policy of not making a petitioner's showing of interest available to parties for inspection, the Region is not at liberty to disclose the documentation submitted as the showing of interest in this matter or disclose whether each union submitted its own showing. However, it is noted that the Board has repeatedly held that when two labor organizations desire to act as joint

bargaining representatives, it is not required that each union separately meet the established showing of interest requirements. See *Mid South Packers, Inc.*, 120 NLRB 495 fn. 1 (1958). In *St. Louis Independent Packing Company*, 169 NLRB 1106, 1107 (1968), the Board stated this more succinctly “We have held that authorization cards designating *only one petitioner* [emphasis added] are sufficient to establish the interest of joint petitioners and that it is immaterial whether the cards indicate a desire for joint or individual representation.” The Board went on to state, “We are persuaded that when 30 percent of the employees in a bargaining unit have indicated a desire to be represented by one *or* the other *or* two unions, and the two unions then offer themselves as joint representatives of the employees, the petitioning unions have demonstrated enough employee interest in their attaining representative status to warrant holding an election.” (Emphasis added) In support of this finding, the Board noted its earlier holding in *Mid South Packers*, *supra* at fn 1, in which it stated, “...we are administratively satisfied that the number of authorization cards designating the Meatcutters as representative is alone sufficient to support the joint petition.” The Employer’s attempt to extrapolate from the above cases a rule that when a petition is jointly filed, each petitioner must submit its own evidence of interest, is not supported by the above holdings. Rather, it is clear from the above-cited case law that so long as a joint petitioner meets the Board’s showing of interest requirements, it is immaterial whether each union submits its own evidence of interest or how large a showing of interest each petitioner presents. Because I have found the Joint Petitioners’ showing of interest is adequate to

warrant further processing of the petition, I am denying the Employer's motion to dismiss the petition.

Whether The Purchasing Clerk Should Be Included In The Unit

The parties are largely in accord as to the composition and scope of the unit. Both agree that it should include all assemblers, machinists, electricians, welders, drivers, painters, janitors, and packing and shipping employees employed by the Employer at its Norwood, Louisiana facility. However, as noted above, the parties disagree on whether the purchasing clerk should be made a part of this unit. The Employer contends she is a plant clerical employee whose inclusion in the unit is mandated by Board law. The Joint Petitioners, in maintaining that the purchasing clerk is not involved in the production process, seeks her exclusion from the unit.

When making unit determinations, the Board examines the community of interest between the disputed employees and those that the parties agree should be made part of the unit. Community of interest factors include, wages, hours and benefits, supervision, job duties, work related contact, functional integration, and interchange. Plant clerical employees are generally included in production and maintenance units because they share a community of interest with employees in such units. *Raytec Co.*, 228 NLRB 646 (1977). The central test for whether an employee is a plant or office clerical is whether his or her duties are an integral part of the production process. *Hamilton Halter Co.*, 270 NLRB 331 (1984). I will thus examine the community of interest between the purchasing clerk and the other unit employees. To see where she fits in the Employer's operations, an overview of the Employer's operational structure and supervisory hierarchy would be helpful. From

there I will examine her duties with particular emphasis on individual community of interest factors, particularly as they relate to whether she is an office or plant clerical. Then I will discuss my conclusions.

Facts

The Employer's facility is organized into five divisions - Production, Administrative, Engineering, Outside Sales and Inside Sales. The Inside Sales Division is supervised by the Inside Sales Manager and is made up of four employees. The Outside Sales Division and Engineering Division are supervised by the Employer's President. The Outside Sales Division consists of two positions, the Road and Bridge National Sales Manager and the Perimeter Security National Sales Manager. The Administrative Division is overseen by the Controller. There are two employees in the Administrative Division, the Office Manager and the Accounting Employee.

The Production Division is overseen by the Plant Superintendent. There are approximately twenty employees in the Production Division, excluding supervisors, and it is these employees that are included in the proposed unit. Under the Plant Superintendent are two supervisors, the Shop Foreman and the Purchasing Manager. Many of the Plant Superintendent's duties and those of the Shop Foreman are overlapping. The Shop Foreman is the immediate supervisor of the assemblers, machinists, electricians, welders, the drivers, and the janitors. The Purchasing Manager is the immediate supervisor of the packing employees, the shipping employees, and the purchasing clerk, the position that is in dispute. As

noted above, the classifications of packing employees and shipping employees are unit positions.

The purchasing clerk's primary responsibility is assuring that there are sufficient materials on hand to meet the production needs of the company. In addition to assuring that there are sufficient materials on hand, she "expedites materials," picks up materials from suppliers, and is involved in the inventory process. One of these duties, picking up materials, is shared by other employees in the Production Division. She may leave the facility to pick up materials several times a week. She works at a desk in the administration building. Her cubicle is by the exit from the building that is closest to the plant where the other production employees work. In carrying out her varied duties, the Purchasing Clerk often ventures into the plant and comes into contact with employees in the petitioned-for unit on a daily basis. However, she never performs production or assembly work.¹ The majority of employees, and all of the employees in the Production Division, are paid on an hourly basis. The wage rates of the production employees fall within a wide range, varying from \$7.00 per hour to \$15.00 per hour, depending upon their position and tenure.² The purchasing clerk receives approximately \$9.50 per hour, which is roughly equivalent to the rate of pay received by the janitor.

¹ The record was silent on whether employees in the petitioned for unit have filled in for her during her absence.

² Assemblers are paid \$11.00 to \$12.00 per hour. The wage rates for machinists range from \$11.00 per hour to \$15.00 per hour while those of electricians range from \$12.00 to \$15.00 per hour. Welders are paid an hourly wage of between \$13.00 and \$14.00. Drivers, on the other hand, earn \$7.00 to \$8.00 per hour. The janitor earns slightly more, \$9.50 per hour, while painters are paid \$11.00 to \$12.00 per hour. The packing employee receives an hourly wage of \$13.00, and the shipping employee is paid \$14.00 per hour.

Employees throughout the company receive the same benefits and work approximately an eight-hour day. Depending in part upon their workload, employees in the production division begin work between 6:00 a.m. and 7:30 a.m. The purchasing clerk generally starts work between 7:30 a.m. and 8:00 a.m. Her hours are somewhat flexible due to her occasional travel. The workday for the other office and administrative employees begins at 8:00 a.m. The plant employees punch a time clock. The purchasing clerk, on the other hand, fills out a handwritten time card. With the exception of one of the inside salespeople, the other employees in the administration building are not required to record their hours.

Analysis

As noted above, the central test for determining whether an individual is an office clerical employee or a plant clerical is whether his or her duties are an integral part of the production process. Among the typical functions performed by plant clerical employees are the ordering of supplies and the maintenance of inventories. *Hamilton Halter*, supra. The purchasing clerk performs both of these duties. It is clear that her work ordering supplies, and her frequent trips to retrieve them, are closely related to the production process. Other factors support the conclusion that she is a plant clerical employee whose community of interest is closer to employees in the petitioned-for plant-wide unit than to those working on the administrative end of the Employer's operation. She is supervised by the same individual who directs the work of the packing employees. Her wages fall within the range of those earned

by the petitioned-for employees and she has frequent work related contact with them.

In view of the above, I will include the purchasing clerk in the unit as a plant clerical employee who shares a community of interest with the eligible employees in the Production Division.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act.

3. The Petitioners claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All assemblers, machinists, electricians, welders, drivers, painters, janitors, purchasing clerks, and packing and shipping employees employed by the Employer at its Norwood, Louisiana facility; excluding all office clerical employees, professional employees, guards, and supervisors as defined by the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by

Sheetmetal Workers International Union, Local 21, AFL-CIO and International Brotherhood of Electrical Workers, Local 995, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to

communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1515 Poydras Street, Suite 610, New Orleans, LA 70112, on or before November 4, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (504) 589-4069. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of

the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on November 13, 2002. The request may **not** be filed by facsimile.

Dated October 30, 2002.

Rodney D. Johnson
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1515 Poydras Street, Room 610
New Orleans, La 70112-3723

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